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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,523	01/12/2004	Hayo Jager	RSW920030259US1	2433
48816	7590	03/25/2005	EXAMINER	
VAN LEEUWEN & VAN LEEUWEN			BARBEE, MANUEL L	
P.O. BOX 90609			ART UNIT	
AUSTIN, TX 78709-0609			PAPER NUMBER	
			2857	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

**Office Action Summary**

Application No.

10/755,523

Applicant(s)

JAGER ET AL.

Examiner

Manuel L. Barbee

Art Unit

2857

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                              |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/12/04</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

On page 11, line 2, delete "one", and insert --three-- in view of the quantity shown in Figure 2, box 280.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 8 and 23 are objected to because of the following informalities:

In claim 8, line 7 of the claim, after "or", insert --more--.

In claim 23, line 7 of the claim, after "or", insert --more--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 5-9, 12-15, 18-21, 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Turicchi, Jr. et al. (US Patent No. 6,628,994).

With regard to receiving performance goals, as shown in claims 1, 8, 14, 21, 23 and 24, Turicchi, Jr. et al. teach measuring system performance and adjusting

Art Unit: 2857

parameters to provide optimal system performance and defining a measure of performance (col. 1, line 57 - col. 2, line 7; Fig. 2). With regard to retrieving a first input parameter from a plurality of parameters and providing the parameter to a test system and receiving an output variable from the test system corresponding the input parameter value, as shown in claims 1, 8, 14, 21, 23 and 24, Turicchi, Jr. et al. teach selecting a parameter, setting the value of the parameter and measuring the value of system performance (Fig. 2, steps 255, 260, 265; col. 3, line 44 - col. 4, line 16). With regard to optimizing the first parameter value based on the received output variables, as shown in claims, 1, 8, 14, 21, 23 and 24, Turicchi, Jr. et al. teach adjusting the parameter to provide the optimal system performance (Fig. 2, step 280). With regard to one or more processors, a memory and nonvolatile storage, as shown in claims 8 and 23, Turicchi, Jr. et al. teach a method for operation on a computer which would include memory and nonvolatile storage (claim 1).

With regard to a system automation engine to test a system under test, as shown in claims 2, 9, 15, 21, 23 and 24, Turicchi, Jr. et al. teach a method for automatic adjustment of computer system parameters (col. 3, lines 44-49). With regard to retrieving a second parameter, providing the second parameter and the first parameter to the test system, receiving an output variable and adjusting the second input parameter based on the output, as shown in claims 5, 12 and 18, Turicchi, Jr. et al. teach selecting a second parameter after adjusting the first parameter (Fig. 2, step 280, step 210). With regard to buffer size, as shown in claims 6, 13, 19, 21, 23 and 24, Turicchi, Jr. et al. teach adjusting the memory dedicated to buffer cache (col. 1, lines

Art Unit: 2857

16-21, claim 1). With regard to response time, as shown in claims 7 and 20, Turicchi, Jr. et al. teach defining performance using response time (col. 1, line 57 - col. 2, line 7).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 10, 11, 16, 17, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turicchi, Jr. et al. in view of Umberger et al. (US Patent Application Publication 2002/0091746).

Turicchi, Jr. et al. teach all the limitations of claim 1 upon which claims 3 and 4 depend, claim 8 upon which claims 10 and 11 depend and claim 14 upon which claims 16 and 17 depend. Further Turicchi, Jr. et al. teach the limitations of claims 22 and 25 that are similar to those found in claim 1. Further with regard to adjusting the first input parameter value, providing the adjust input value to the test system and receiving one or more second output values, as shown in claims 3, 10, 16, 22 and 25, Turicchi, Jr. et al. teach incrementing the value of the selected parameter, and measuring the system performance with the new parameter value (Fig. 2, steps 250-270). With regard to determining whether the first or second output variables are closer to the goals, as shown in claims 3, 10, 16, 22 and 25, Turicchi, Jr. et al. teach adjusting the parameter to a value for optimal system performance after testing all values in a specified range

Art Unit: 2857

(Figs. 2, steps 250, 280). With regard to incrementing the value, as shown in claims 4, 11 and 17, Turicchi, Jr. et al. teach incrementing the value of the parameter (Fig. 2, step 270).

Turicchi, Jr. et al. do not teach performing the adjusting again based on the determination of whether a first or second output value is closest to the performance goals, as shown in claims 3, 10, 16, 22 and 25. Umberger et al. teach checking the system performance after each change in system priority to determine whether system priority should be adjusted again (Fig. 8, pars. 64-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the automatic computer system adjustment, as taught by Turicchi, Jr. et al. to include checking system goals after each parameter adjustment to determine whether further adjustment is needed, as taught by Umberger et al, because then there would have been no need to test all parameters in a range after optimal system performance had been achieved.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fisher, Jr. et al. (US Patent No. 5,754,446) teach optimizing performance of a turbine.

Magro (US Patent No. 6,556,952) teaches optimizing parameters of a controller.


Art Unit: 2857

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel L. Barbee whose telephone number is 571-272-2212. The examiner can normally be reached on Monday-Friday from 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mlb  
March 18, 2005

  
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